

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-5968

PETITION OF MARK PFEFFERLE AND ANN KEMPSKI

(Hearing held March 3, 2004)

OPINION OF THE BOARD

(Effective date of Opinion, March 12, 2004)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(b)(2) and 59-B-3.1. The petitioners propose to construct a second-story addition that requires a 7.50 foot variance as it is within 12.50 feet of the rear lot line and a deck that requires a one (1) foot variance as it is within ten (10) feet of the rear lot line. The required rear lot line setback for the second-story addition is twenty (20) feet and the required rear lot line setback for the deck is eleven (11) feet.

The subject property is Lot 14-A, Block K, Sligo Park Hills Subdivision, located at 19 Wessex Road, Silver Spring, Maryland, 20910, in the R-60 Zone (Tax Account No. 131301051141).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a second-story addition over the existing one-story residence and to construct a 7.9 x 9 foot deck in the southern side yard.
2. The petitioners testified that in August of 2003, during Hurricane Isabel, a large tree fell on their home and that the structure has been uninhabitable since the time. See, Exhibit Nos. 3(b) through 3(e) [photographs].
3. The petitioners testified that their property is a small, shallow lot that is 5,832 square feet. The petitioners testified that their lot is the second smallest lot in the neighborhood. See, Exhibit No. 7 (zoning vicinity map). The petitioners testified that the existing house is currently located in the rear yard setback and that the proposed construction of a second-story addition will not expand the footprint of the house.
4. The petitioners testified that property's rear yard boundary is angled and that the rear yard boundary moves inward from north to south. See, Exhibit No. 4 (site plan). The petitioners testified that the deck will adjoin an existing

screened porch and will follow the wall-line of the existing porch. The petitioners testified that residence has an existing entrance where the deck is proposed.

5. The petitioners testified that most of the homes in their neighborhood are two-story structures and that their neighbors support the variance request.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) *By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The petitioners' property is a small, shallow, oddly-shaped, lot. The lot is substandard for the R-60 Zone. The existing residence is currently located in the rear yard setback and the second-story addition will not expand the footprint of the house. The deck will adjoin an existing screened porch and will follow the wall-line of the porch. The Board finds that these are exceptional circumstances peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owners.

- (b) *Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the construction of a second-story addition and a deck are the minimum reasonably necessary.

- (c) *Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The Board finds that the proposed construction will continue the residential use of the property and that the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) *Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The Board finds that the proposed construction will not materially impact the view from the neighboring homes and that the variances will not be

detrimental to the use and enjoyment of the neighboring and adjoining properties.

Accordingly, the requested variances of 7.50 feet from the required twenty (20) foot rear lot line setback for the construction of a second-story addition and of one (1) foot from the required eleven (11) foot rear lot setback for the construction of a deck are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Angelo M. Caputo, with Donna L. Barron, Allison Ishihara Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 12th day of March, 2004.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.